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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JESSE MEYER, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

PORTFOLIO RECOVERY
ASSOCIATES, LLC, a Delaware limited
liability company, and DOES 1-100,
inclusive

Defendant.

No. 3:11-cv-01008-AJB-RBB

**DECLARATION OF
JOSHUA CHERKASLY**

Pursuant to 28 U.S.C. § 1746, Joshua Cherkasly hereby declares as follows:

I. SUMMARY

1. In this declaration, I describe how Portfolio Recovery Associates, LLC's ("PRA")
dialers do not have, and never have had, the functionality or capacity to generate or create

1 telephone numbers using a random or sequential number generator, and therefore, PRA's dialers
2 do not have the capacity to produce or store such numbers.

3 **II. MY BACKGROUND**

4 2. I am the Assistant Vice President of Production at Portfolio Recovery Associates,
5 LLC ("PRA") and have been in this position since January 2009.

6
7 3. Prior to becoming an employee at PRA, I worked as an Applications Programmer
8 for Alliance Data, a company headquartered in Dallas, Texas. My professional experience
9 includes: supporting Avaya PDS/PC implementations; designing, coding, testing, and
10 implementing enhancements on Avaya PDS/PC applications and related internal applications;
11 implementing and troubleshooting telephony circuits and network connectivity issues;
12 administering and developing SQL Server 2000/2005/2008 Databases; supporting Oracle 8i/9i
13 Databases; developing ad-hoc and custom reporting for collection departments, supporting
14 applications and working with mainframe DB2 data; and, managing staff responsible for day-to-
15 day operation and support of four Avaya PC systems.

16 4. I am proficient in several programming languages, including shell scripting,
17 Visual Basic scripting and T-SQL programming and I have received certifications for Witness,
18 Kana, and Nice applications. As an employee for PRA, I work on-site and I program and support
19 PRA's Avaya dialers. I also support PRA's Windows Server Operating systems for their call-
20 recording platform, and I also support and administer their call-recording technology as well as
21 its Microsoft SQL Servers. I have also supported Davox and Ontario Systems dialers in my
22 career. Until September 2010, PRA used one Ontario dialer in limited circumstances. Paragraphs
23 8 through 16 of this Declaration apply equally to the Ontario dialer as the paragraphs relate to the
24 functionality and capacity of its dialers.

25 5. I have over 10 years of experience working with Avaya dialers that are identical,
26 or substantially similar to, the ones currently owned and operated by PRA. I also have earned the
27 Avaya Enterprise Support Partner certification related to the function and use of Avaya dialers.
28

1 Additionally, I have attended the Avaya end user training for Avaya dialers, which was a five-
2 day course at Highlands Ranch, Colorado.

3 **III. PRA'S DIALERS**

4 **A. PRA's Avaya Dialers**

5
6 6. PRA owns four Avaya Proactive Contact dialers. PRA does not operate or use any
7 other dialers.

8 7. PRA's dialers consist of an Avaya server that utilizes a Linux operating system.
9 PRA's dialers use Red Hat Enterprise Linux ES release 4. The version of the Linux Operating
10 System is a custom build for Avaya dialers. PRA's dialers also include a switch, Proactive
11 Gateway 230 (PG230) that facilitates the connections to inbound calls, outbound calls, transfers
12 and agent connections. The server, the switch, and the Linux operating system make up what
13 constitutes PRA's dialers.

14 **B. PRA's Dialers Do Not Have The Capacity To Produce Or Store Telephone**
15 **Numbers Using A Random Or Sequential Number Generator.**

16 8. PRA's dialers do not have the capacity to produce or store telephone numbers
17 using a random or sequential number generator. In fact, PRA's dialers have never had this
18 functionality or capacity. Put another way, PRA's dialers do not use any random or sequential
19 number generator, and they never have done so.

20 **C. PRA's Dialers Would Have To Be Modified And Reprogrammed In Order**
21 **To Provide Them With The Capacity To Produce Or Store Telephone**
22 **Numbers Produced With A Random Or Sequential Number Generator.**

23 9. In order to dial phone numbers using a random or sequential number generator,
24 PRA would have to change the current programming of its dialers. PRA's dialers are currently
25 set to dial only phone numbers that are contained within a list created by PRA's collection
26 system, which is called "PRAnet." These lists contain only the phone numbers associated with
27 the accounts that PRA owns.
28

1 10. If PRA desired to dial telephone numbers stored or produced with a random or
2 sequential number generator on its dialers, it would have to do the following:

3 a. PRA would need to create a list of random or sequential numbers. PRA
4 does not possess such a list. Indeed, PRA only possesses lists of specific phone numbers
5 associated with debtors' accounts.

6 b. Assuming that PRA did possess a list of random or sequential telephone
7 numbers, PRA would then have to engage one or more computer programmers to write
8 code to automatically import that list into its dialers or electronically transfer the list to
9 the dialers.

10 c. Next, PRA would have to have its computer programmer(s) reprogram the
11 dialers across a variety of settings. For example, all of the configuration files that are
12 currently in place to process the accounts that PRA receives would have to be recreated to
13 accommodate a new list. This reprogramming process would take approximately 160
14 computer-programming hours, or put another way, up to 30 days worth of work by me or
15 some other Avaya-certified programmer.
16

17 11. As is addressed below, it would make no sense for PRA to use a random or
18 sequential number generator, let alone spend the thousands of dollars to reprogram its dialers to
19 create such a generator. PRA is in the business of contacting debtors to work with them to pay
20 their past-due debts. It simply makes no sense for PRA to store or produce telephone numbers
21 randomly or sequentially to collect debts, as the vast majority of such calls would be made to
22 U.S. citizens who would not owe any debt to PRA.

23 **IV. PRA DOES NOT USE ANY OF ITS DIALERS TO STORE OR PRODUCE**
24 **TELEPHONE NUMBERS RANDOMLY OR SEQUENTIALLY.**

25 12. Instead of dialing telephone numbers stored or produced with a random or
26 sequential number generator, PRA operates and uses its dialers strategically to target debtors that
27 have a higher likelihood of paying their past-due debts. The telephone numbers are provided to
28

1 the PRA agent as part of a sophisticated, custom-made computer program that strategically
2 identifies accounts that have an increased likelihood of being collected.

3 13. Specifically, when PRA's agents use the Avaya dialers, the dialer delivers each
4 agent certain telephone numbers from a file that is received from the PRAnet collection system
5 that identifies accounts that have an increased likelihood of being collected, that is processed into
6 a calling list on the dialer. These telephone numbers are not, and never have been, provided to
7 the PRA agent using a random or sequential number generator.

8 14. In addition to strategically identifying accounts that have an increased likelihood
9 of being collected, the computer program that works with PRAnet also contains a function that
10 monitors various factors with the call to ensure compliance with various state and city
11 regulations. For example, certain states only allow a limited amount of attempts to the debtor per
12 week; the program takes these rules and regulations into consideration.

13 15. After PRA strategically identifies accounts that have an increased likelihood of
14 being collected and other business rules to assure compliance, the telephone numbers associated
15 with the account are entered into a computer file and transmitted to the dialer. The Avaya dialer
16 refers to this computer file as a "calling list." The dialer processes the calling lists and prepares
17 them for dialing by ensuring that PRA calls the phone numbers in the legally allowed time
18 frames. Once the calling lists are processed, the records associated with the numbers in the
19 calling lists are placed into a "job."
20

21 16. When a PRA agent begins calling debtors, the PRA agent is electronically
22 provided access to one of the jobs that have been previously created based on the set criteria
23 discussed in the paragraph above. The accounts within these jobs are called by the agents when
24 they contact debtors about paying their debts. These telephone calls are not, and never have been,
25 produced using a random or sequential number generator. Indeed, PRA's agents do not even call
26 debtors in sequential order. In fact, PRA goes to great lengths to call debtors at particular times
27 of the day rather than in sequential order to comply with federal laws and to maximize the
28 chances that PRA will be able to reach the debtor and collect the applicable debt.

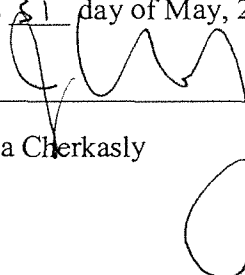
V. MANY COMPUTERS, IF PROPERLY PROGRAMMED, COULD STORE OR PRODUCE AND DIAL TELEPHONE NUMBERS RANDOMLY OR SEQUENTIALLY.

17. A computer program could be written on many forms of current technology to generate or store, and dial, telephone numbers randomly or sequentially. Indeed, you could theoretically write such a program to run on a Windows PC or Windows Server, Playstation gaming console, and on a smart phone such as an iPhone or BlackBerry.

18. In other words, a competent computer programmer could write computer code that would allow something as basic as a personal electronic device to store or produce telephone numbers using a random or sequential number generator. While I could perhaps understand why some mass marketer or individual may want to do this for advertising, it makes no sense for PRA's business to do so.

19. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Norfolk, Virginia, this 31 day of May, 2011.


Joshua Cherkasly

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